Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

DR. DILIP K. CHAUDHURI,
Petitioner,

v.

STATE OF TENNESSEE,
TENNESSEE STATE UNIVERSITY;
DR. ANNIE NEAL;
DR. DECATUR ROGERS;
DR. JAMES A. HEFNER; and
DR. ARTHUR C. WASHINGTON,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the age and maturity and/or education of the complaining individual is the deciding factor under the *Lemon* test, the *Lynch* endorsement test or the *Lee* coercion test, for determining whether or not formal prayer at official functions and ceremonies of a state university constitutes a violation of the Establishment Clause of the First Amendment.

2. Whether the expected participation of a tenured faculty member, who is also a believer of the Hindu Religion, at state university sponsored functions and ceremonies, where formal prayers are delivered by Christian clergy, constitutes coercion so as to deprive him of his civil rights to freedom of religion guaranteed under the Free Exercise Clause of the First Amendment.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner,Dr. Dilip K. Chaudhuri, respectfully requests that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is reported as *Chaudhuri v. State of Tenn., et al.*, 130 F.3d 232 (6th Cir. 1997). [App. A] The opinion of the district court reported is *Chaudhuri v. State of Tennessee,* at 886 F. Supp. 1374 (M.D. Tenn. 1995). [App. B]

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Sixth Circuit ("Court of Appeals") was entered on November 18, 1997. [App. A]

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides in relevant part: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ."

Title 42 U.S.C. § 1983 provides in relevant part:

> Every person who, under the color of any statute, ordinance, regulation, custom or usage of any state . . ., subjects or causes to be subjected, any citizen of the United States . . . to the deprivation

> of any rights, privileges or immunities secured by the Constitution in laws, shall be liable to the person injured in an action of law, a suit in equity, or other proper proceedings for redress.
>
> . . .

STATEMENT OF THE CASE

The fundamental question of this case is whether the age and maturity and/or college education of a plaintiff is the deciding factor for determining whether or not formal prayer at state university functions and ceremonies constitutes a violation of the Establishment Clause under the *Lemon* test, the *Lynch* endorsement test, or the *Lee* coercion test.

This question arises out of a challenge by Petitioner to the practice of including formal prayer at Tennessee State University (''university'') graduation ceremonies, which, as a tenured professor, he was expected, if not required, to attend. Petitioner alleged the practice violated the Establishment Clause, prohibiting state sponsorship of religion and the Free Exercise Clause by requiring his attendance and de facto participation in prayers that were contrary to his own religious beliefs, thereby depriving him of his civil rights, under color of law, in violation of 42 U.S.C. § 1983.

PROCEEDINGS BELOW

On January 31, 1991, Petitioner filed his Complaint in the United States Court for the Middle District of Tennessee alleging (1) that Respondents violated Title VII of the Civil Rights Act of 1964, as amended, by denying him two separate promotions based upon his religion, Hindu, and his national origin, India; and (2) that Respondents promoted religious practices

at university ceremonies which deprived him of his civil rights to freedom of religion guaranteed by the Establishment Clause and Free Exercise Clause of the First Amendment.

In response to Respondents' Motion to Dismiss, Petitioner sought and was granted Leave to File an Amended Complaint. The Amended Complaint clarified that the named Respondents were being sued in their individual capacities and had initiated or enouraged Christian prayers at official university functions and/or had approved or ratified such religious activities as part of the university's official program.[1]

The district court granted the Motion to Dismiss Petitioners' Section 1983 claims against Respondent State of Tennessee for Damages, Injunction and Declaratory relief based on 11th Amendment grounds, but denied said Motion as to the Individual Respondents. Respondents filed their Answer to the Amended Complaint.

Petitioner subsequently sought and was granted leave to file a Second Amended Complaint to join additional party Respondents, Dr. James Hefner and Dr. Arthur Washington, the newly appointed President and Vice President of the university. Dr. George Cox was dropped as a party Respondent because of a suggestion of death which had been filed on November 6, 1991.

On April 19, 1993, Petitioner filed a Motion for Preliminary Injunction to prevent the Respondents from including an invocation and benediction in the form of religious prayers as part of the University's spring graduation ceremonies. On April 23, 1993, Respondent Dr. Hefner responded with an Affidavit that there would be no invocation or benediction at the spring

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[1] *Chaudhuri v. State of Tennessee*, 787 F. Supp. 860 (M.D. Tenn. 1991).

graduation ceremonies. On April 30, 1993, the Magistrate filed his Report and Recommendation that, based upon Respondent Dr. Hefner's Affidavit, the Motion for Preliminary Injunction be dismissed as moot.

On May 6, 1993, Petitioner filed a Second Motion for Preliminary Injunction on grounds that religious prayers were still part of other university functions that Petitioner was required to attend. Respondents filed their Response supported by another Affidavit from Dr. Hefner. On June 30, 1993, a hearing was held before the Magistrate on Petitioner's Second Motion for Preliminary Injunction. On July 1, 1993, the Magistrate entered an Order taking the matter under advisement and instructing the parties to submit briefs on whether Respondents should also be enjoined from including a moment of silence at official university events.

Petitioner amended his Motion for Preliminary Injunction to include enjoining a moment of silence at university functions. Respondents responded by filing an additional Affidavit by Dr. Hefner.

The Magistrate filed a Second Report and Recommendation on August 5, 1993, that Petitioner's Motion for Injunctive Relief, as amended, be denied on grounds that Respondent Dr. Hefner had issued a policy statement that university-sponsored functions would not include verbal prayer. Because the occurrence of the spontaneous recitation of "The Lord's Prayer" during an official moment of silence at the May 8, 1993 graduation ceremony was unrelated to any state action; and because the occurrence of verbal prayers during moments of silence in the future was speculative, there was no proof of irreparable harm. Injunctive relief was therefore not needed. Petitioner filed timely Objections to the Report and Recommendation.

On November 24,1993, Respondents filed their Motion for Summary Judgment on Petitioner's Title VII claims and Section 1983 claims. On January 6, 1995, the district court entered an Order and Memorandum granting Summary Judgment on Petitioner's Section 1983 claims under the Establishment Clause and Free Exercise Clause and denying Summary Judgment on one of Petitioner's two Title VII claims. [App. B & C] The district court held that school officials had not violated the Establishment Clause "when prayers, whether sectarian or non-sectarian, are offered or a moment of silence is recognized at a university graduation ceremony or other ceremonial events." [App. B, 44a] The district court found no factual basis to support Petitioner's Free Exercise Clause claim. On January 9, 1995, the district court entered a second order clarifying Summary Judgment on Petitioner's Title VII claim. [App. D] On January 11, 1995, the district court entered an Order declaring Petitioner's Second Motion for Preliminary Injunction moot. [App. E]

Petitioner's remaining Title VII claim was tried without a jury on January 24, 25 and 26, 1995. On March 12, 1996, the district court entered judgment for the Respondents on Petitioner's remaining Title VII claim. This Order made the previous Summary Judgment on Petitioner's Section 1983 claims a final appealable order. [App. F] Timely Notice of Appeal was filed on April 4, 1996.

The denial of Petitioner's claims under 42 U.S.C. § 1983 for the deprivation of civil rights guaranteed under the Establishment Clause and Free Exercise Clause was appealed to the Court of Appeals for the Sixth Circuit. The Court, in a split decision, affirmed the district court's ruling that Petitioner's Request for Injunctive Relief was moot by the practice of declaring a moment of silence in lieu of verbal prayer at university ceremonies [App. A, 7a]; that Petitioner did not

sustain injury from state-sponsored prayer in violaton of the Establishment Clause because his age and education made him less susceptible to religious indoctrination than children [App A, 15a-16a], and that Petitioner did not show any injury from state-sponsored prayer under the Free Exercise Clause because his attendance at such events did not constrain or abridge his practice of Hinduism in any way. [App. A, 16a]

Judge Jones dissented in part and opined that Petitioner's prayer for declaratory and injunctive relief is not moot, on grounds that there was no guarantee that the practice of verbal prayer would not be reinstated. [App 1, 19a] Judge Jones noted this was a possibility because of the strong tradition of prayer at the university ceremonies and functions as evidenced by the spontaneous recitation of the Lord's Prayer during the moment of silence at the two graduation ceremonies in 1993. [App. A, 19a] Based upon the cosmetic changes in the university's tradition from Christian-based prayer to non-sectarian prayer caused by Petitioner's protest, Judge Jones concluded that Petitioner had proved the university to have established religion sufficiently to justify a grant of declaratory and injunctive relief. [App. A, 21a]

STATEMENT OF THE FACTS

Petitioner is a believer of the Hindu Religion and is a tenured faculty member at Tennessee State University in Nashville, Tennessee. Hindus worship a female deity, Durga, who resides on earth. Petitioner teaches graduate and undergraduate courses at the University's School of Engineering.

As a faculty member, Petitioner is "expected," if not compelled, to attend university-wide functions, including graduation exercises, by the University's written employment

policies in effect, and therefore must participate with other faculty members in these university ceremonies. He is expected to participate at formal graduation ceremonies as a part of the School of Engineering faculty, dressed in an academic cap and gown.

As a result of complaints by Petitioner and other university faculty members who are believers of non-Christian religions, General Counsel for the State University and Community College System of Tennessee issued an opinion letter dated May 3, 1988, stating that prayer at a school function did not constitute a violation of the Establishment Clause of the First Amendment if it was framed in language that did not favor or appear to endorse one particular religious view. General Counsel went on to say that "a moment of silence" is also an "appropriate vehicle for allowing the tradition of prayer [at commencement and graduation exercises] without running afoul of the Constitution."

For more than five years, Petitioner had made numerous complaints about the Respondents' practice of including prayer at state university functions which, as a faculty member, he was required to attend. Finally, in 1991, Petitioner filed suit in district court under Title VII of the Civil Rights Act of 1964, for employment discrimination, and under 42 U.S.C. § 1983 requesting the university officials be enjoined from violating his civil rights guaranteed under the Establishment Clause and Free Exercise Clause of the First Amendment.

Prior to the 1992 appointment of Respondents Dr. James Hefner and Dr. Arthur Washington, as President and Vice President of the University, the policy of promoting nonsectarian prayer at university functions was the responsiblity of Respondent Dr. Annie Neal, as Acting Vice-President for Academic Affairs.

A typical example of the so-called non-sectarian prayer at issue in this case was delivered at the May 19, 1991, commencement exercises by Dr. James Haney, a clergyman and associate professor of history at Tennessee State University:

> Let us pray. Most Heavenly Father, we're thankful for the opportunity to gather here in honor of this class of 1991. For we know that there are so many stories and so many here that are a part of this class today, and we're so grateful, Oh Heavenly Father, that You've allowed us to come to this occasion, so we might be able to understand in God all things are possible.
>
> And so, Most Heavenly Father, we thank You for allowing those who have come from such a long distance so that they too might be a part of this great celebration today. With all its important faculty, Tennessee State University is a great institution, it is a great institution because of the people who are in Tennessee State University.
>
> And so we are thankful for the faculty that has prepared this class for graduation today. Sometimes it looked as if the prospects for some of them completing the task were quite dim. But we know that they held on through all kinds of trials and tribulations, and they believed in themselves and they believed in Tennessee State University, and so they are part of it today.
>
> We're thankful for the administration here at Tennessee State University. Our new president, may he be able to be blessed with the kind of vision that is needed so that he might lead us into the 21st century. Oh Heavenly Father, we thank Thee for the Maintenance Department and the Janitorial Department, and everybody and everything that had anything to do with the greatness of this great institution.
>
> Bless us as we go throughout this program. Give

> us all things that we need. And deliver us, Most Lovable Heavenly Father, from pessimistic expectations. These and all blessings we ask from a God that we know, let us all say . . . Amen.

Respondents Dr. Hefner and Dr. Washington were directly responsible for the inclusion of religious prayers or a moment of silence in the invocation and benediction portions of the University's graduation ceremonies in May and August of 1993.

For Petitioner to be required to attend graduation ceremonies and have to stand in approving silence while generic, non-sectarian prayers were recited, was offensive to Petitioner, as a believer of Hinduism.

On April 23, 1993, Respondent Dr. Hefner, in response to Petitioner's Motion for Injunctive Relief, filed an Affidavit with the Court that the invocation and benediction portion of the university graduation ceremony had been removed and no prayer would take place on May 8, 1993.

In response to Petitioner's Second Motion of Preliminary Injunction to enjoin non-sectarian prayer at university functions that would occur prior to trial, but which were not addressed in Respondent Dr. Hefner's Affidavit of April 23, 1993, Respondent Dr. Hefner issued a policy statement that verbal prayers were from that time forward prohibited at University programs. Respondent Dr. Hefner also filed an Affidavit declaring that, while University faculty are encouraged to attend graduation ceremonies, they are not compelled to do so.

On May 8, 1993, Petitioner attended the university graduation ceremony. Instead of formal prayer, a "moment of silence" was on the program at which time all persons in the audience were to rise and remain silent. In fact, a majority of the audience did not remain silent upon standing, but used

the opportunity to recite "The Lord's Prayer" followed by applause in an obvious response to Petitioner's objection to the practice of having formal prayer at graduation ceremonies. The response of the audience was endorsed by the speaker, who returned to the podium and said "Thank you. Please be seated."

Petitioner's professional performance evaluations contain specific reference to attendance at university functions (e.g., "convocation and commencement, faculty meetings and student performances"). Petitioner's refusal to attend such events with state-sponsored religious ceremonies that are offensive to his religious beliefs caused him to score lower on the part of his performance evaluation relating to university service than his faculty colleagues who are Christians, whose religious beliefs permitted them to attend such functions without objection.

Some Christian a faculty members have chosen to attack Petitioner for asserting his constitutional rights by objecting to state-sponsored prayer at university functions.

On August 7, 1993, Petitioner attended the T.S.U. graduation ceremony. The keynote speaker was prominently identified in the program as pastor of a local Church of Christ, who called for "a moment of silence," which once again resulted in the audience standing and spontaneously reciting "The Lord's Prayer" in the same manner as occurred during the May 8, 1993, graduation ceremony.

Petitioner has been personally offended and publicly humiliated by the continuing practice of the Respondents, by their acts and omissions, which have encouraged and condoned verbal prayer through a declared moment of silence while officially stating such a moment of silence served some secular purpose.

REASONS FOR GRANTING THE WRIT

The Sixth Circuit Court of Appeals has declared certain constitutional principles that run contrary to the prevailing First Amendment doctrine.

1. Voluntary cessation of the practice of offering prayer at graduation ceremonies renders the action for injunction and declaratory relief moot.

2. Non-sectarian prayers may be used to solemnize state-sponsored ceremonies where the audience is college-educated adults with little or no risk of religious indoctrination.

3. The Establishment clause is not violated where participation in state university graduation ceremonies, which include prayer, is not coerced. Even if attendance and/or participation is required, the age and maturity, and/or college education of the complaining individual warrants a difference in determining a violation of the Establishment Clause.

4. The Free Exercise Clause is not violated where the participation of a non-adherent in a state university graduation ceremony, that includes prayer, is not coerced such that there is no constraint or abridgment of a particular religious practice.

Thus, the opinion below conflicts with prior rulings by this Court and other appellate courts that prayer at state-sponsored graduation ceremonies violates the First Amendment guarantees of religious freedom.

I.

The Petitioner's claim for injunctive and declaratory relief has not been made moot by the Respondent's change in policy to substitute a moment of silence for non-sectarian prayer at graduation ceremonies.

As noted by Judge Jones in his partial dissent, "there is no barrier to reinstatement of the policy, save the risk of a similar lawsuit." [App. A, 19a] However, given the conclusion of the district court that neither sectarian nor non-sectarian prayer at state university graduation ceremonies would violate the Establishment Clause [App. B, 44a], the risk of a similar lawsuit in the future, should prayer be reinstated, has all but been eliminated.

The spontaneous recitation of the Lord's Prayer during official moments of silence is evidence of the strength of the tradition of prayer at Tennessee State University. [Jones, App. A, 19a] This creates a substantial likelihood that the alleged conduct will be reinstituted if declaratory and injunctive relief is not granted. [Jones, App. A, 19a] *United Sates v. W.T. Grant Co.*, 345 U.S. 629, 632 (1953) (a defendant's voluntary cessation of a challenged practice will not moot an action because a defendant is free to return to his old ways.) *Chicago Teachers Union, Local No. 1 v. Hudson*, 475 U.S. 292, 305 n.14 (1986) (voluntary cessation of an allegedly illegal act does not automatically render a case moot.) *See also Doe v. Duncanville Independent School District*, 994 F.2d 160 (5th Cir. 1993), ("Voluntary cessation of allegedly violative religious practices does not preclude finding of irreparable injury").

II.

The use of non-sectarian prayer for secular purpose of solemnizing the occasion of a graduation ceremony has been rejected as being a violation of the Establishment Clause by this Court in *Lee v. Wiseman*, 505 U.S. 577 (1992). The argument that public prayers at events such as graduation are merely ceremonial, or part of a constitutional "civic" religion that may be used to solemnize a public event, has been previously rejected by the Supreme Court. In *Lee v. Wiseman*,

supra, the closest analogous case, high school graduation prayers were held to be unjustified on ceremonial grounds. Such prayers constituted "state-sponsored and state-directed religious exercise." The Court rejected the "suggestion" that "official or civic religion" may be established by the government "as a means of avoiding the establishment of a religion with more specific creeds. . . ." 505 U.S. at 586.

At least three other circuits have held that prayer is a religious exercise that may not be used to solemnize a public event. *ACLU v. Black Horse Pike Regional Bd. of Ed.*, 84 F.3d 1471 (3rd Cir. 1996) (graduation ceremony does not require prayer to solemnize occasion.) *Jaggar v. Douglas County School District*, 862 F.2d 724 (11th Cir. 1989) (solemnizing purpose can be accomplished without religious means by requiring wholly secular inspirational speeches.) *Harris v. Joint School District No. 241*, 41 F.3d 4217 (9th Cir. 1994), vacated 115 S.Ct. 2604 (1995) dismissed as moot on remand 62 F.3d 1233 (9th Cir. 1995) (use of prayer to solemnize high school graduation ceremony did not serve valid secular purpose and violated the Establishment Clause.) cf. *Tauford v. Brand*, 104 F.3d 982 (7th Cir.), *cert. denied*, 118 S.Ct. 60 (1997). ("Invocation and benediction serve legitimate secular purposes of solemnizing public occasions rather than approving particular religious beliefs.")[2]

The Sixth Circuit has tacitly affirmed the district court's conclusion that "offering prayers, whether sectarian or nonsectarian, at a public university graduation ceremony does not violate the Establishment Clause because it does not carry the potential for establishing religion in general or any par-

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[2] *Tauford v. Brand* can be distinguished from the holding of the Court of Appeals in this case because its analysis did not consider *Lemon v. Kurtzman*, 403 U.S. 602 (1971), but relied upon *Marsh v. Chambers*, 463 U.S. 783 (1983).

ticular religion'' [App. B, 44a] because Petitioner's ''age and maturity prevent him from being susceptible to any 'religious indoctrination' or peer pressure under such circumstances.'' (App. B, 45a, 46a] Such a ruling reduces the Establishment Clause to a ''children's'' amendment.

After ruling that Petitioner's claim for injunctive and declaratory relief was moot because the university had substituted a moment of silence for non-sectarian prayer, the Sixth Circuit has tacitly adopted the district court's use of the age and maturity of the complaining party as the standard to determine whether the prayer at state university functions and ceremonies serves a secular purpose under the first prong of the *Lemon* test [App. A, 8a-10a], and whether the prayer advances or inhibits religion under the second prong of the *Lemon* test [App. A, 11a], or serves to endorse religion under the *Lynch* test [App. A, 11a], or constitutes impermissible state coercion under the *Lee* test. [App. A, 13a] According to the Court of Appeals, under each test, if the participants and/or the audience are college-educated adults, then prayer at a state university graduation will not constitute a violation of the Establishment Clause. Reasonable college-educated adults will understand that prayer is offered at university graduation for the secular purpose of merely solemnizing the occasion. [App. A, 8a-9a] Reasonable college-educated adults would not be affected by such prayer so that it would not advance or inhibit religion (citing *Lemon v. Kurtzman, supra*), there being no risk of religious indoctrination. [App. A, 11a] Further, reasonable college-educated adults would understand that prayer at such ceremonies does not endorse religion (citing *Lynch v. Donnelley*, 465 U.S. 668 (1984)) [App. A, 11a], and that their participation in such ceremonies is not coerced since attendance is ''voluntary,'' citing *Lee v. Wiseman, supra*. [App. A, 14a-15a]

The use of the age, maturity and/or college education of the complaining individuals by the Court of Appeals to determine whether a particular practice violates the Establishment Clause undermines the true purpose of the Establishment Clause by reducing it to a children's amendment. "We conclude that the obvious difference between plaintiffs such as Dr. Chaudhuri and children at an impressionable age in life warrants a difference in constitutional results." [App. A, 16a]

The district court's age and maturity standard, or the Sixth Circuit's reasonable "college-educated adult observer" standard, presumes that the children of faculty and graduating students are not in attendance at graduation ceremonies. There is no basis in the record for this presumption. Indeed, this Court in *Lee v. Wiseman, supra,* recognized that graduation ceremonies are for the families and those closest to the students to celebrate academic success. At 595.

Even if it were true that everyone, including Dr. Chaudhuri, attending graduation ceremonies was a college-educated adult, this holding also presumes that such individuals are not susceptible to religious indoctrination by state-sponsored prayer. It presumes that such well-educated and mature individuals will accept that prayers which conflict with their own particular religious beliefs are offered for the secular purpose (*Lemon*) of solemnizing an occasion and will not have the effect of advancing or inhibiting religion (*Lemon*), nor will they believe that such prayers constitute government endorsement of religion (*Lynch*), nor will they believe that their attendance is not voluntary (*Lee*). Litigation by mature, college-educated, nonadherents belies this presumption.

III.

The Court of Appeals has misconstrued the element of coercion that was present in *Lee v. Wiseman, supra,* which was observed to encourage high school students to attend their graduation ceremonies to mean that "coercion" is now a requirement for a prima facie case for violation of the Establishment Clause. This is contrary to the prevailing doctrine for reviewing Establishment Clause cases. This was made very clear in the concurring opinions by Justice Blackmun and Justice Souter in *Lee v. Wiseman, supra.*

An Establishment Clause violation occurs if the challenged practice constitutes "government endorsement of religion, its sponsorship, and/or active involvement in religion, *whether or not its citizens are forced to conform.*" (Emphasis added) at 609 (Blackmun, J., concurring). *A "literal application of a coercion test would render the Establishment Clause a virtual nullity . . . .* ((Emphasis added) at 621 (Souter, J., concurring).

Thus, the Court of Appeals' holding that, because Petitioner was not required to attend and participate in the university graduation ceremonies at which prayers were offered, there was no Establishment Clause violation, is wrong. This misapplication of the coercion element of First Amendment Jurisprudence needs to be corrected by this Court.

IV.

The Court of Appeals' ruling that prayers at state university graduation ceremonies did not constrain or change Petitioner's right to practice the Hindu religion, guaranteed under the Free Exercise Clause, because his participation was not mandatory, conflicts with the Court's reasoning in *Lee v. Wiseman, , supra,* and *Torcaso v. Watkins,* 367 U.S. 458 (1961).

Petitioner's participation at state university graduation ceremonies was expected, if not required, as an integral part of his employment as a tenured faculty member. Participation resulted in Petitioner's having to acknowledge the validity of the university's use of Christian clergy to offer prayers at these ceremonies, which prayers conflicted with Petitioner's religious beliefs.

The importance of a graduation ceremony has been recognized by the Court in *Lee v. Wiseman*. "Graduation is a time for family and those closest to the student(s) to celebrate success and express mutual wishes of gratitude and respect. . . ." At 595.

Whether or not the university would ever impose sanctions on Petitioner if he chose not to attend graduation ceremonies is not needed for the Court to find "coercion." Under the First Amendment guarantees of religious freedom, "the State cannot require one of its citizens to forfeit his or her rights and benefits as the price of resisting conformance to state-sponsored religious practice." *Lee v. Wiseman, supra,* at 596.

His absence would not be construed as voluntary in any sense of the term. Absence from a graduation ceremony would require Petitioner to forfeit those intangible benefits to him (*Lee v. Wiseman, supra*) as a teacher to join in the celebration of his students' academic achievements and success as the price for avoiding his having to participate in a religious exercise led by Christian clergy that offends his Hindu faith.

Any law, rule or regulation that serves to coerce a non-adherent to participate in any religious prayer, by definition, constitutes a prima facie violation of the non-adherent's right to religious free exercise.

> The First Amendment forbids not just laws respecting an establishment of religion, but also those "pro-

> hibiting the free exercise thereof." Yet laws that coerce non-adherents to "support" or participate in any religion or its exercise, *Allegheny County, supra*, at 659-60, 109 S.Ct. at 3136 (Opinion of Kennedy, J.) would virtually by definition violate the right to free exercise. *See Employment Div. Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872, 877, 110 S.Ct. 1595, 1599, 108 L.Ed.2d 876 (1990) (under Free Exercise Clause, "government may not compel affirmation of religious belief"), *citing Torcaso v. Watkins*, 367 U.S. 488 (1961). *Lee v. Wiseman, supra* at 621. (Souter, J., concurring).

In *Torcaso v. Watkins*, the Court held:

> Neither State or Federal Government can constitutionally . . . impose requirements which aid all religions against nonbelievers, and neither can aid those religions based upon a belief in the existence of God against those religions founded on different beliefs [such as Hinduism]. At 495.

Petitioner's employment required his participation in certin university ceremonies where prayers were given. In addition, he has a professional interest in attending other events sponsored by the University Engineering School, where prayers are also offered, but Petitioner declines to do so because his voluntary participation in such religiously motivated practices is offensive to his own Hindu beliefs.

Thus, there is an element of coercion in this case that gives rise to a violation of Petitioner's right to free exercise by expecting, if not, requiring, his involuntary participation at the state sponsored religious activities, which are offensive to his Hindu beliefs. His participation is a part of his employment as a university faculty member.

If he chooses not to participate in order to resist conformance with state sponsored religious practices, he must forfeit

his right to participate in the formal graduation ceremony to celebrate the academic achievements of his students; as well as the right to attend or participate in other university ceremonies; and under the language of the policies of the university, it could also have negative impact on his annual performance evaluations.

Under these circumstances, Respondents' promotion of prayer at state university events constitutes a deprivation of Plaintiff's civil rights to religious freedom guaranteed under the Free Exercise Clause of the First Amendment.

CONCLUSION

This ruling of the Court of Appeals that Petitioner's claim for injunctive relief is moot, and the dismissal of his First Amendment claims by the district court must not be permitted to stand. The district court's age and maturity test, and its declaration that there is no Establishment Clause violation whether the prayer offered at state university graduation ceremonies is sectarian or non-sectarian, or whether a moment of silence is observed, opens the door for a return to the practice of bringing religious speakers to graduation ceremonies who may use the occasion to proselytize a captive audience. Such a result will surely reduce the Establishment Clause to a "nullity." The reliance upon the age and maturity of the complaining individual to determine whether or not there are Establishment Clause violations will have the effect of reducing the Establishment Clause to a mere "children's amendment." Thus, the historic purpose of the Establishment Clause will have been subverted.

The religious guarantees of the First Amendment were included for the express purpose of preventing coerced religious indoctrination of adult populations, which has been, and con-

tinues to be, a serious human rights problem outside the United States, and which has motivated immigration to the United States for more than 200 years. Given the diversity of religious beliefs in America, the importance of the Establishment Clause protections from state "civic" religion must be preserved and not diminished by lower court opinions such as the one below.

Further, the importance of Petitioner's Free Exercise Clause claim is belied by the summary treatment it received from the district court and the Court of Appeals. The Court is therefore requested to address both questions raised in this Petition.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DR. DILIP K. CHAUDHURI, *Plaintiff-Appellant,*	)	
v.	)	No. 96-5538
STATE OF TENNESSEE, TENNESSEE STATE UNIVERSITY; DR. ANNIE NEAL; DR. DECATUR ROGERS; DR. JAMES A. HEFNER; and DR. ARTHUR C. WASHINGTON, *Defendants-Appellees.*	)	

Appeal from the United States District Court
for the Middle District of Tennessee at Nashville.
No. 91-00081—Robert L. Echols, District Judge.

Argued: July 29, 1997

Decided and Filed: November 18, 1997

Before: JONES, NELSON, and RYAN, Circuit Judges.

COUNSEL

ARGUED: Joseph H. Johnston, Nashville, Tennessee, for Appellant. Linda A. Ross, OFFICE OF THE ATTORNEY GENERAL, Nashville, Tennessee, for Appellees. Marshall Beil, ROSS & HARDIES, New York, New York, for Amicus Curiae. **ON BRIEF:** Joseph H. Johnston, Nashville, Tennessee, for Appellant. Linda A. Ross, Michael E. Moore, OFFICE OF THE ATTORNEY GENERAL, Nashville, Tennessee, Leslie A. Bridges, OFFICE OF THE ATTORNEY GENERAL, CRIMINAL JUSTICE DIVISION, Nashville, Tennessee, for Appellees. Marshall Beil, ROSS & HARDIES, New York, New York, for Amicus Curiae.

NELSON, J., delivered the opinion of the court, in which RYAN, J., joined. JONES, (pp. 16-19), delivered a separate opinion concurring in part and dissenting in part.

OPINION

DAVID A. NELSON, Circuit Judge. The question presented here is whether a nonsectarian prayer or moment of silence at a public university function violates the First Amendment. We answer the question "no."

Tennessee State University formerly made it a practice to include invocations and benedictions at certain university events. The plaintiff, Dilip K. Chaudhuri, Ph.D., brought the present lawsuit to contest the constitutionality of this practice. The university then discontinued the prayers and adopted a moment of silence instead. Dr. Chaudhuri challenged the moment of silence as well, alleging that the intent behind the change was to allow the continuation of prayers.

Finding no violation of either the Establishement Clause or the Free Exercise Clause of the First Amendment, the district court entered summary judgment for the defendants. We agree that the practices in question are not unconstitutional. The judgment will be affirmed.

I

Dr. Chaudhuri came to this country from India in 1971, and in due course he became a naturalized United States citizen. He is a tenured professor of mechanical engineering at Tennessee State University in Nashville. An adherent of the Hindu religion, he repeatedly expressed his unhappiness over TSU's custom of having prayers offered at university func-

tions such as graduation exercises, faculty meetings, dedication ceremonies, and guest lectures.

Responding to a complaint from Dr. Chaudhuri, the general counsel of the State University and Community College System of Tennessee issued an opinion letter to its member institutions in May of 1988. The letter stated that prayers at university events are not unconstitutional if they do not appear to favor or endorse any particular religious view. The letter went on to suggest that a moment of silence would be an "appropriate vehicle for allowing the tradition of prayer without running afoul of the Constitution."

Based on this opinion letter, perhaps, TSU officials decided that prayers at university events should be of a "generic," nonsectarian nature. Many of the newly genericized prayers were delivered by Dr. James Haney, a clergyman and associate professor of history. Such prayers were also offered by local religious leaders at the invitation of TSU. The university did not review the prayers in advance and did not provide any guidelines for content, other than to request that the prayers be nonsectarian and the references to Jesus Christ be omitted.

The following prayer, delivered by Dr. Haney at commencement exercises in May of 1991 was typical:

> "Let us pray. Most Heavenly Father, we're thankful for the opportunity to gather here in honor of this class of 1991. For we know that there are so many stories and so many here that are a part of this class today, and we're so grateful, O Heavenly Father, that you've allowed us to come to this occasion, so that we might be able to understand in God all things are possible.
>
> "And so Most Heavenly Father, we thank you for

allowng those that have come from such a long distance so that they too might be a part of this great celebration today. With all its important faculty, Tennessee State University is a great institution, and it is a great institution because of the people who are in Tennessee State University.

"And so we're thankful for the faculty that has prepared this class for graduation today. Sometimes it looked as if the prospects for some of them completing the task were quite dim. But we know that they held on through all the trials and tribulations, and they believed in themselves and they believed in Tennessee State University, and so they are part of it today.

"We're thankful for the Administration here at Tennessee State University. Our new president, may he be able to be blessed with the kind of vision that is needed so that he might lead us into the 21st century. O Heavenly Father, we thank Thee for the Maintenance Department and the Janitorial Department, and everybody that had anything to do with the greatness of this great institution.

"Bless us as we go throughout this program. Give us all the things that we need. And deliver us, Most Lovable Heavenly Father, from pessimistic expectations. These and all blessings we ask from a God that we know, let us all say. . . Amen."

Dr. Chaudhuri filed his civil rights action against the State of Tennessee, TSU, and several TSU administrators in January of 1991. The complaint alleged that the defendants had violated Title VII of the Civil Rights Act of 1964 by twice failing to promote Dr. Chaudhuri on account of his religion and national

origin.[1] The complaint also alleged that the practice of offering prayers at TSU functions violated rights protected by the Establishment and Free Exercise Clauses of the First Amendment. The complaint included a prayer for compensatory damages, as well as declaratory and injunctive relief.

Dr. Chaudhuri asserted that as a TSU faculty member he was required to attend university functions at which prayers were offered. His performance evaluations were based in part on a "university service" component, and he maintained that this included participation in university events.

The defendants responded that Dr. Chaudhuri was not required to attend the functions in question and did not receive lower scores for absenting himself. Faculty members were encouraged to attend certain university-wide events, according to the defendants, but were not required to do so. Attendance was not monitored. The defendants represent that no employee of TSU — including Dr. Chaudhuri — has suffered any adverse consequences for failing to attend a university function of the sort with which we are concerned in this case.

In April of 1993 Dr. Chaudhuri moved for a preliminary injunction that would have prevented the offering of a prayer at commencement exercises scheduled for the next month. At about the same time that the motion was filed, TSU President James Hefner issued a policy statement announcing that there would be no verbal prayers at the exercises. He informed graduation planners that a moment of silence would be acceptable to "afford dignity and formality to the event . . . and to solemnize the occasion." On the strength of the new

[1] The district court granted summary judgment for the defendants on one of the Title VII claims and entered judgment for the defendants after a bench trial on the other. Dr. Chaudhuri has not appealed these rulings.

TSU policy, the district court denied Dr. Chaudhuri's request for injunctive relief.

The program for the May graduation exercises included a moment of silence. On reaching that point in the program, the speaker asked everyone to rise and remain silent. The moment that followed proved less than silent. Someone, or a group of people, began to recite the Lord's Prayer aloud. Many audience members joined in — spontaneously, by all accounts — and loud applause followed. TSU officials say they had no advance knowledge of what was going to happen.

Dr. Chaudhuri filed a second motion for a preliminary injunction, pointing out that prayers were still being delivered at university functions other than graduation ceremonies. In light of the incident at the graduation ceremony, he asked that moments of silence be enjoined as well. President Hefner responded with an affidavit stating that moments of silence would replace prayers at all university functions where prayers had been offered in the past. Dr. Hefner also attested that he had instructed his staff to clarify that faculty attendance at university events, while encouraged, was not mandatory. The district court denied the injunction.

Summer graduation exercises were scheduled for early August of 1993. The keynote speaker was Dr. David Jones, Jr., a prominent educator and administrator in the Nashville public school system. As noted in the commencement program, Dr. Jones was also the pastor at a local church. When Dr. Jones asked the audience to stand for a moment of silence, a portion of the audience again recited the Lord's Prayer. TSU officials denied complicity in this incident as well.

The defendants eventually moved for summary judgment on all of Dr. Chaudhuri's claims. In January of 1995 the district court granted the motion on the Establishment Clause and

Free Exercise Clause claims. *Chaduri v. State of Tennessee*, 886 F. Supp. 1374 (M.D. Tenn. 1995). After a final judgment had been entered, Dr. Chaudhuri appealed the disposition of his First Amendment claims.

II

The Establishment Clause provides that "Congress shall make no law respecting an establishment of religion. . . . U.S. Const. amend. I. The Due Process Clause of the Fourteenth Amendment makes the Establishment Clause applicable to the states. *Widmar v. Vincent*, 454 U.S. 263, 271 n.8 (1981); *Pinette v. Capitol Square Review & Advisory Bd.*, 30 F.3d 675, 677 (6th Cir. 1994), *aff'd*, 515 U.S. 753 (1995). As a state university, TSU is thus subject to the strictures of the Establishment Clause.

Although the university has abandoned its practice of including verbal prayers at its events, Dr. Chaudhuri's challenge to that practice remains a live controversy insofar as he is seeking money damages on account of it. His claims for injunctive and declaratory relief with respect to the prayers appear to have become moot, however.

A

In *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971), the Supreme Court adopted a three-part test for determining whether state-sponsored activity can pass muster under the Establishment Clause:

> "First, the [state action] must have a secular . . . purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion, finally, the [state action] must not foster an excessive government entanglement with religion." (Citations and quotation marks omitted.)

Although widely criticized and occasionally ignored, the *Lemon* test "still" appears to govern Establishment Clause cases." *Americans United for Separation of Church and State v. City of Grand Rapids*, 980 F.2d 1538, 1543 (6th Cir. 1992) (*en banc*); see also *Lee v. Weisman*, 505 U.S. 577, 587 (1992) ("we do not accept the invitation . . . to reconsider our decision in *Lemon v. Kurtzman*"); *Agostini v. Felton*, 117 S.Ct. 1310 (1997) (applying *Lemon*).

1

In considering whether a challenged state action has a "secular purpose" under *Lemon*, we inquire "whether government's actual purpose is to endorse or disapprove of religion." *Edwards v. Aguillard*, 482 U.S. 578, 585 (1987) (quotation and citation omitted); see also *Wallace v. Jaffree*, 472 U.S. 38, 56 (1985). The government's purpose need not be exclusively secular, *Lynch v. Donnelly*, 465 U.S. 668, 681 and n.6 (1984); *Bown v. Gwinnett County Sch. Dist.*, 112 F.3d 1464, 1469 (11th Cir. 1997), for a "[f]ocus exclusively on the religious component of any activity would inevitably lead to its invalidation. . . ." *Lynch*, 465 U.S. at 680. Unless it seems to be a sham, moreover, the government's assertion of a legitimate secular purpose is entitled to deference. *Edwards*, 482 U.S. at 586-87; *Bown*, 112 F.3d at 1469. We must be cautious about attributing unconstitutional motives to state officials. See *Mueller v. Allen*, 463 U.S. 388, 394 (1983).

TSU's former practice of including nonsectarian prayers at its events met the "secular purpose" element of the *Lemon* test, in our opinion. A prayer may serve to dignify or to memorialize a public occasion. As TSU puts it, quoting *County of Allegheny v. American Civil Liberties Union*, 492 U.S. 573, 625 (1989) (O'Connor, J., concurring in part and concurring in the judgment), the prayers "solemniz[ed] public occasions,

express[ed] confidence in the future, and encourag[ed] the recognition of what is worthy of appreciation in society." These are legitimate secular purposes. See *Tanford v. Brand*, 104 F.3d 982, 986 (7th Cir.), *cert. denied*, 118 S.Ct. 60 (1997). We do not believe that these asserted purposes are a sham designed to allow TSU to proselytize students and faculty members.

Any prayer has a religious component, obviously, but a single-minded focus on the religious aspects of challenged activities — which activities, in an Establishment Clause case, are religiously-oriented by definition — would extirpate from public ceremonies all vestiges of the religious acknowledgments that have been customary at civic affairs in this country since well before the founding of the Republic. The Establishment Clause does not require — and our constitutional tradition does not permit — such hostility toward religion. *Lynch*, 465 U.S. at 673. The people of the United States did not adopt the Bill of Rights in order to strip the public square of every last shred of public piety.

Rejecting the label "nonsectarian," Dr. Chaudhuri and *amicus curiae* (The National Committee for Public Education and Religious Liberty) persist in labeling the prayers in question as "Christian." The plaintiff and the Committee imply that TSU's purpose in allowing the prayers was to advance the cause of Christianity. But these prayers, lacking any explicit reference to Jesus Christ, do not strike us as overtly Christian.

The prayers did, to be sure, evoke a monotheistic tradition not shared by Hindus such as Dr. Chaudhuri. But

> "[t]he content of the prayer is not of concern to judges where, as here, there is no indication that the prayer opportunity has been exploited to pros-

> elytize or advance any one, or to disparage any other, faith or belief. That being so, it is not for us to embark on a sensitive evaluation or to parse the content of a particular prayer." *Marsh v. Chambers*, 463 U.S. 783, 794-95 (1983).

If the verbal prayers had a legitimate secular purpose, as we believe they did, it follows almost *½a fortiori* that the moments of silence have such a purpose. This is not a case like *Wallace v. Jaffree*, where the sponsor of a challenged statute declared that his legislation was an "effort to return voluntary prayer to our public schools." *Wallace*, 472 U.S. at 43. The record in the case at bar shows that TSU President Hefner instituted the moment of silence in order to "afford dignity and formality to the event . . . and to solemnize the occasion." A moment of silence is clearly a legitimate way to accomplish those objectives.

Dr. Chaudhuri contends that the moments of silence are a ruse designed to foster prayer at TSU functions. In this connection he cites the 1988 opinion letter in which the general counsel of the State University and Community College System said that a moment of silence would be an "appropriate vehicle for allowing the tradition of prayer. . . ." That is not the purpose asserted by TSU's president, however — and for reasons already suggested, we do not believe that the Constitution would be offended if it were.

Dr. Chaudhuri also protests that, on each of two separate occasions, members of a graduation audience interrupted a moment of silence with a recital of the Lord's Prayer. But Dr. Chaudhuri admits that there is no evidence of complicity by the university in these incidents. *Amicus curiae* suggests that the university's failure to admonish the crowd amounted to encouragement or endorsement of the recitation of this Christian prayer. We disagree. "The proposition that schools

do not endorse everything they fail to censor is not complicated." *Board of Educ. v. Mergens*, 496 U.S. 226, 250 (1990) (plurality opinion). The Establishment Clause does not require TSU to silence an audience of private citizens.

2

We must also determine whether the principal or primary effect of the challenged state action either advances or inhibits religion. *Lemon*, 403 U.S. at 612. This part of the test requires us to consider the reaction of a hypothetical reasonable observer. *Pinette*, 30 F.3d at 678-79; *Americans United*, 980 F.2d at 1543-44. If a reasonable observer would conclude that the message communicated is one of either endorsement or disapproval of religion, then the challenged practice is unlawful. *County of Allegheny*, 492 U.S. at 597 (plurality opinion); *Americans United*, 980 F.2d at 1543-44.

The principal or primary effect of including generic prayers at public university functions, in our view, is not to advance or inhibit religion. A reasonable observer, it seems to us, would conclude that the nonsectarian prayers delivered at TSU events were intended to solemnize the events and to encourage reflection. A reasonable observer would not conclude that TSU was trying to indoctrinate the audience. It would not be reasonable to suppose that an audience of college-educated adults could be influenced unduly by prayers of the sort in question here. If these prayers "endorsed" religion, the endorsement was indirect, remote, and incidental — and a *de minimis* religious gesture does not, by itself, create an Establishment Clause problem. *Lynch*, 465 U.S. at 683; *Tanford*, 104 F.3d at 986. The prayers were no more than a "tolerable acknowledgment of beliefs widely held among the people of this country." *Marsh*, 463 U.S. at 792 (1983).

As far as the moment of silence is concerned, it seems even clearer to us that the primary effect entails no significant advancement or inhibition of religion. No reasonable observer could conclude that TSU, merely by requesting a moment of silence at its functions, places its stamp of approval on any particular religion or religion in general. See *Wallace*, 472 U.S. at 73 (O'Connor, J., concurring in the judgment). A moment of silence is not inherently religious, *id.* at 72; a participant may use the time to pray, to stare absently ahead, or to think thoughts of a purely secular nature. The choice is left to the individual, and no one's beliefs are compromised by what may or may not be going through the mind of any other participant. *Id.*

3

To pass the final part of the *Lemon* test, the challenged government action must avoid excessive entanglement of church and state. *Lemon*, 403 U.S. at 613. It does not seem to us that the practice of including nonsectarian prayers or moments of silence at TSU events creates any church-state entanglement at all, let alone "excessive" entanglement.

As to the inclusion of prayers, the role of TSU officials consisted of (1) inviting a local church leader to deliver an invocation and benediction, and (2) requesting that the prayers be nonsectarian in nature. TSU neither reviewed the prayers nor prescribed guidelines for their content, except to request that there be no reference to Jesus Christ. The moment of silence involved no interaction whatever between TSU administrators and any church — and there is, as we have said, nothing inherently religious about a moment of silcence.

In sum, any entanglement resulting from the inclusion of nonsectarian prayers at public university functions is, at most, *de minimis*. See *Tanford*, 104 F.3d at 986. The entanglement

created by a moment of silence is nil. *Cf. Bown*, 112 F.3d at 1474. Part three of the *Lemon* test poses no more of a problem here than do parts one and two.

B

In *Lee v. Weisman*, 505 U.S. 577 (1992), the Supreme Court held it unconstitutional to offer nonsectarian prayers at public middle school and high school graduation exercises. The "dominant facts mark[ing] and control[ling]" the Court's decision were these:

> "State officials direct the performance of a formal religious exercise at promotional and graduation ceremonies for public schools. Even for those students who object to the religious exercise, their attendance and participation in the state-sponsored religious activity are in a fair and real sense obligatory, though the school does not require attendance as a condition for receipt of the diploma." *Id.* at 586.

While the graduation exercises in *Lee* were not technically mandatory, the Court thought it would be "formalistic in the extreme" to say that there was any real choice to miss "the one school event most important for the student to attend." *Id.* at 595, 597. In the primary and secondary school context, moreover, there is "subtle coercive pressure" to conform to the state-directed religious exercise. *Id.* at 592. "The prayer exercises in this case are especially improper," the Court concluded, "because the State has in every practical sense compelled attendance in an explicit religious exercise at an event of singular importance to every student, one the objecting student had no real alternative to avoid." *Id.* at 598.

Lee v. Weisman does not control the case at bar. In fact,

the *Lee* Court explicitly declined to decide the question presented here:

> "Finding no violation under these circumstances would place objectors in the dilemma of participating, with all that implies, or protesting. We do not address whether that choice is acceptable if the affected citizens are mature adults, but we think the State may not . . . place primary and secondary school children in this position." *Id.* at 593.

Lee attached particular importance to the youth of the audience and the risk of peer pressure and "indirect coercion" in the primary and secondary school context. "[T]here are heightened concerns," the Court emphasized, "with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools." Id. at 592.

In contrast to *Lee*, "here there was no coercion — real or otherwise — to participate" in the nonsectarian prayers. *Tanford*, 104 F.3d at 985. Faculty attendance at TSU functions is encouraged but not mandatory. TSU has represented without contradiction that it does not monitor faculty attendance at the university events in question and that no faculty member has ever been penalized for non-attendance. The dean of the engineering school has attested that Dr. Chaudhuri's attendance or non-attendance never affected his evaluations. By no stretch of the imagination can we say that Dr. Chaudhuri's attendance at TSU graduation exercises was "in a fair and real sense obligatory." *Lee*, 505 U.S. at 586.

Even if Dr. Chaudhuri had been obliged to attend these events, moreover, he would not have had to participate in the prayers or pay any attention to them. See *Tanford*, 104 F.3d at 985. There was absolutely no risk that Dr. Chaudhuri — or any other unwilling adult listener — would be indoctrinated

by exposure to the prayers. The peer pressure and "subtle coercive pressure" that concerned the Court in *Lee* were simply not present here.

We cannot accept the notion that Dr. Chaudhuri was "coerced" into participating in the prayers merely because he was present. He may have found the prayers offensive, but that reaction, in and of itself, does not make them unconstitutional. *Lee*, 505 U.S. at 597 ("People may take offense at all manner of religious as well as nonreligious messages, but offense alone does not in very case show a violation").

Dr. Chaudhuri and *amicus curiae* say that to focus on a plaintiff's relative maturity would be to turn the Establishment Clause into a children's rights measure. But the Establishment Clause clearly requires case-by-case examination of the particular facts presented. *Lee*, 505 U.S. at 597-98; *Lynch*, 465 U.S. at 678-79. The Supreme Court has always considered the age of the audience an important factor in the analysis. See *Mergens*, 496 U.S. at 250; *Edwards*, 482 U.S. at 583-84; *Marsh*, 463 U.S. at 792 ("Here, the individual claiming injury by the practice is an adult, presumably not readily susceptible to 'religious indoctrination' or peer pressure") (citations omitted); *cf. Widmar*, 454 U.S. at 274 n.14 ("University students are, of course, young adults. They are less impressionable than younger students and should be able to appreciate that the University's policy is one of neutrality toward religion").

We may safely assume that doctors of philosophy are less susceptible to religious indoctrination than children are. To find a constitutional violation where there is no real threat to religious liberty would be to divorce Establishment Clause analysis from the very purpose of the clause. We conclude that the obvious difference between plaintiffs such as Dr.

Chaudhuri and children at an impressionable stage of life "warrants a difference in constitutional results." *Edwards*, 482 U.S. at 584 n.5 (quoting *Abington Sch. Dist. v. Schempp*, 374 U.S. 203, 253 (1963) (Brennan, J., concurring)).

III

Dr. Chaudhuri also contends that TSU's prayers and moments of silence violate the Free Exercise Clause. See U.S. Const. amend. I ("Congress shall make no law respecting an establishment of religion, or *prohibiting the free exercise thereof*") (emphasis added). Having found that Dr. Chaudhuri was not required to participate in any religious exercise he found objectionable, we conclude that his Free Exercise claim is without merit. There has been no showing that his practice of Hinduism was constrained or abridged in any way.

IV

> "The First Amendment does not prohibit practices which by any realistic measure create none of the dangers which it is designed to prevent and which do not so directly or substantially involve the state in religion exercises or in the favoring of religion as to have meaningful and practical impact. It is of course true that great consequences can grow from small beginnings, but the measure of constitutional adjudication is the ability and willingness to distinguish between real threat and mere shadow." *Lee*, 505 U.S. at 598 (quoting *Schempp*, 374 U.S. at 308 (Goldberg, J., concurring)).

TSU's bland expressions of gratitude (for the work of campus janitors, *e.g.*), like its expressions of hope for presidential vision and the blessings of divine providence generally,

posed no real constitutional threat. They cast nothing more than shadows of constitutional concern. And now that moments of silence have replaced verbal prayers at TSU, even those shadows have been dissipated.

The judgment of the district court is **AFFIRMED.**

CONCURRING IN PART, DISSENTING IN PART

NATHANIEL R. JONES, Circuit Judge, concurring and dissenting. I write separately to express my disagreement with the majority's ambiguous treatment of the nonsectarian prayer-based challenge brought by Chaudhuri.[1] I believe that the issue is ripe for consideration and should have been decided in favor of Chaudhuri. Still, I concur with the majority holding with respect to the moment of silence practices of Tennessee State University (the "University").

" 'Mootness results when events occur during the pendency of the litigation which render the court unable to grant the requested relief.' " *Berger v. Cuyahoga County Bar Ass'n*, 983 F.2d 718, 724 (6th Cir. 1993) (*quoting Carras v. Williams*, 807 F.2d 1286, 128º (6th Cir. 1986)). Prior decisions of this court and the Supreme Court make clear that the voluntary cessation of an allegedly illegal act does not automatically render a case moot. *Chicago Teachers Union, Local No. 1 v. Hudson*, 475 U.S. 292, 305 n. 14 (1986); *Linton ex rel. Arnold v. Commissioner of Health and Env't.*, 30 F.3d 55, 57 (6th Cir. 1994); *Weaver v. University of Cincinnati*, 942 F.2d 1039, 1042 (6th Cir. 1991). We are compelled to consider "whether there has been complete discontinuance, whether the effects continue after discontinuance, and whether there is any other reason that justified decision and relief." *Linton*, 30 F.3d at 57 (quoting *Magnuson v. Hickory Hills*, 993 F.2d 562 (7th Cir. 1991) and C. WRIGHT, A. MILLER & E. COOPER, FEDERAL PRACTICE AND PROCEDURE: JURISDICTION § 3533.7, at 350 (2d ed. 1984)).

[1] It is unclear from the majority opinion whether this court has passed on the issue or declared it moot. *See* Maj. Op. 8. In my view, Chaudhuri is entitled to declaratory and injunctive relief on this matter.

In the case before us, the University, by order of its president, ceased the nonsectarian prayer practice on June 8, 1993. Although the issue may appear to be settled by virtue of this cessation order, I believe that this court is obligated to pass on the issue for two compelling reasons. First, there is no barrier to reinstatement of the policy, save the risk of a similar lawsuit. Here, the cessation was implemented for an indefinite period of time. This factor alone, in my judgment, requires that this court consider the issue on its merits. *See Chicago Teachers Union, Local No. 1,* 475 U.S. at 305 n.14; *Linton ex rel. Arnold,* 30 F.3d at 57; *Weaver,* 942 F.2d at 1042.

Even so, there is another justification for addressing the merits of the challenge. Although the spontaneous recitation of the "Lord's Prayer" during the moment of silence does not comprise state action, this event — which has occurred twice in the past — is demonstrative of the strength of the prayer tradition at the University. Not only does the official decree fail to guarantee that the nonsectarian prayer practice has been discontinued, the community expectations that led officials to persist with the practice — in spite of the substantial legal questions — do not seem to have subsided.

To the extent that the majority has considered the merits of the nonsectarian prayer challenge, I am compelled to dissent. Although, as the majority opinion states, "we must be cautious about attributing unconstitutional motives to state officials", we must be equally — if not more so — vigilant to guard against quantifying the humiliation visited upon one who follows a non-Christian religion or tradition within a nation that maintains a strong Christian tradition. Maj. Op. 8. The prohibitions against "Establishment" are so fundamental that we must not balance a violation of the Establishment Clause against community norms. It is enough that the clause has been violated.

The violation here occurred due to an institutional refusal to abandon Christian prayer. Even though the University instructed those delivering invocations to eliminate the name "Jesus Christ" from their prayers, several of the speakers testified that the removal of that name constituted the only difference in prayers after the cessation of sectarian prayers.[2] The mere omission of the name Jesus Christ does not *ipso facto* render an otherwise Christian prayer neutral. Rather than determining that a particular name has been omitted from state-sponsored speech, we are required to determine whether the effect of a given state-sponsored practice *establishes* religion. "[W]e must ascertain whether 'the challenged governmental action is sufficiently likely to be perceived by adherents of the controlling dominations [sic] as an endorsement, and by the nonadherents as a disapproval, of their individual religious choices.'" *Cf. County of Allegheny v. American Civil Liberties Union,* 492 U.S. 573, 597 (1989) (plurality opinion) (quoting *School District of the City of Grand Rapids v. Ball,* 473 U.S. 373, 390 (1985).

I find it significant that the prayer practices were initially Christian-based. It was only after repeated questioning by Chaudhuri that the University instituted the non-sectarian prayer policy. Given the context, it is likely that the nonsectarian prayers would have been viewed by Christian adherents as an attempt to preserve the tradition of Christian prayer. Moreover, as is clear from the litigation inspired in some

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[2] A review of the prayer contained in the majority opinion reveals the following references to the Christian Deity: "Heavenly Father" contains a package of religious bias. First, the term "heaven" is Christian. Although other religions may have some concept of an afterlife, the distinct imagery and technical lineage of that word stems from the Christian religions. Second, the term "Father" denotes a single male deity. According to Chaudhuri's Hindu faith, there is a female deity, Durga, who resides on earth.

measure by the nonsectarian prayer policy, nonadherents perceived the policy as disapproving of their religious practices. While the prayers at issue here may not be "overtly Christian," even a slightly Christian prayer poses a serious constitutional problem, in my judgment.

The majority has applied a litmus test that will certainly confuse future officials and policy-makers confronted with the increasingly diverse religious orientation of the American public. I cannot resign myself to conclude that the challenge posed by Chaudhuri regarding the nonsectarian prayer practices of the University should be deemed moot. Furthermore, upon a full consideration of the merits, I am convinced that the University sufficiently "established" religion to justify the grant of declaratory and injunctive relief in favor of Chaudhuri. To that extent, I, therefore, respectfully dissent.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

DR. DILIP K. CHAUDHURI,	)	
	)	
Plaintiff,	)	
v.	)	No. 3-91-0081
	)	JUDGE ECHOLS
STATE OF TENNESSEE, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM

Presently pending before this Court is Defendants' Motion for Summary Judgment, to which Plaintiff has filed a Memorandum in Opposition. For the reasons more fully discussed herein, Defendant's Motion for Summary Judgment is hereby GRANTED IN PART and DENIED IN PART. Accordingly, this case will proceed to trial as scheduled to try Plaintiff's claim of employment discrimination regarding the denial of his promotion to Head of the Department of Mechanical Engineering.

Plaintiff, Dr. Dilip K. Chaudhuri, brought this suit against Defendants, State of Tennessee, Tennessee State University ("TSU"), and four TSU professors and administrators—Dr. Annie Neal ("Neal"), Dr. George Cox ("Cox"), Dr. Decatur Rogers ("Rogers"), and Dr. Chinyere Onwubiko ("Onwubiko"). Plaintiff has brought two causes of action. First, Plaintiff, who at all times relevant to this suit was a tenured, full professor at TSU,[1] brought an action for employ-

[1] TSU is an historically black university. The majority of its student and faculty population is black. In fact, black employees at TSU have been declared not to be members of a protected class for purposes of Title VII,

ment discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* 1988), arguing that Defendants refused to promote him based on his race and/or religious beliefs. Plaintiff is an Asian originally from the Republic of India, and he follows the Hindu religion. Second, Plaintiff claims that Defendants deprived him of his civil rights in violation of 42 U.S.C. § 1983. Plaintiff argues that Defendants violated his rights under both the Establishment Clause and the Free Exercise Clause of the First Amendment by approving the practice of offering Christian prayers at university functions that he is required to attend. Plaintiff now seeks monetary, declaratory, and injunctive relief for these alleged violations.

By an Order entered July 24, 1991 (Docket Entry No. 30), Judge Wiseman dismissed Plaintiff's 42 U.S.C. § 1983 claim in its entirety against Defendants State of Tennessee and TSU. Plaintiff later amended his complaint to add two TSU administrators, Dr. James A. Hefner ("Hefner") and Dr. Arthur C. Washington ("Washington"), as Defendants in this action (Docket Entry No. 52).[2]

Plaintiff's employment discrimination claim is based on the denial of his applications for promotion to either Dean of the School of Engineering at TSU or Head of the Mechanical Engineering Department at TSU. In the fall of 1987, the position of Dean of the School of Engineering became available and a search committee was appointed to recommend a new dean. Plaintiff applied for the position in September 1987.

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and the school is currently subject to a court-ordered desegregation plan. (See Complaint, Docket Entry No. 1, ¶ 26; Amended Complaint, Docket Entry No. 27, ¶ 13; Answer, Docket Entry No. 33, ¶ 13).

[2] Defendant Cox was not included as a defendant in Plaintiff's Second Amended and Supplemental Complaint as a Suggestion of Death was filed with the Court on Defendant Cox's behalf. (Suggestion of Death Upon the Record Under Rule 25(a)(1), Docket Entry No. 36).

Soon after applying for the position, Plaintiff filed a complaint with the Tennessee Board of Claims objecting to the offering of Christian prayers at university functions he was required to attend. As a result of Plaintiff's complaints, the Tennessee Board of Regents issued a memorandum on May 9, 1988 to all member colleges and unversities, including TSU. This memorandum stated that the Establishment Clause prohibited the offering of sectarian prayers at state university-sponsored functions.

The selection committee considered Plaintiff and eight other applicants for the position of Dean of the School of Engineering. The committee ranked each applicant in nine differet areas. After ranking each applicant, the committee submitted the names of the three highest ranking applicants to Defendant Neal. Defendants contend that Plaintiff was not among the three highest ranking applicants.[3] Defendants claim that Defendant Rogers, who is black, was the highest ranking applicant and received the recommendation of the committee. Defendant Neal then recommended Defendant Rogers to the President of TSU, Dr. Otis Floyd, who made the decision to extend an offer to Defendant Rogers and forwarded the recommendation to the Tennessee Board of Regents, which accepted the recommendation.

After Defendant Rogers assumed his position as Dean of the School of Engineering in 1988, a search began for a new Head of the Mechanical Engineering Department. Plaintiff, who was on leave to work in Boulder, Colorado, applied for that position as well. Applicants for the position submitted their applications to Defendant Rogers, who passed those applica-

[3] Unfortunately, virtually all of the records regarding the selection of the Dean of the School of Engineering in 1988 cannot be found. Plaintiff contends that the very fact that these documents have been "lost" renders Defendants' promotion decision suspect.

tions on to the selection committee chaired by Dr. Satinderpaul Devgan. On June 26, 1989, Plaintiff wrote a letter to Defendant Rogers, requesting that he use the bio-data from his personnel file and all other necessary information for purposes of his application. Rather than include all of the bio-data from Plaintiff's personnel file, Defendant Rogers gave to the selection committee only Plaintiff's faculty profile on file with the university for accreditation purposes.

Before the selection committee made its final screening report, Dr. Benjamin Okeke, another applicant, was flown to Nashville to interview for the position on June 20, 1989. At the time, Dr. Okeke, who is black, was ranked first by the selection committee. Once the selection committee received Plaintiff's application materials from Defendant Rogers, the committee made a final ranking determination. According to a 100-point system assessing various criteria, the committee gave Dr. Okeke the highest ranking, Plaintiff received the second highest ranking, and Defendant Onwubiko received the third highest ranking. Thus, Dr. Okeke received the recommendation of the committee. The committee forwarded this recommendation to Defendant Neal, who, in turn, forwarded it to the Tennessee Board of Regents.

After learning of the university's recommendation to offer the position to Dr. Okeke, Plaaintiff filed an objection with the Tennessee Board of Regents, claiming that he was more qualified for the position and that his application was not given appropriate consideration. As a result of this objection, the recommendation was withdrawn.

The following year, Defendant Rogers began a new search for the Head of the Mechanical Engineering Department. He appointed Dr. Mohan Malkani to chair a new selection committee. Of the six members on the new committee, four had

served on the previous year's selection committee.

Defendant Rogers also altered the published requirements for the position. Initially, the job announcement required only a Ph.D. in Mechanical Engineering. The second job announcement included the requirement of a B.S. degree in Mechanical Engineering as well. Plaintiff does not have a B.S. degree in Mechanial Engineering but in another related filed [sic].

While waiting for a new Head of the Department of Mechanical Engineering, Defendant Rogers appointed Defendant Onwubiko as Interim Department Head in August, 1989. At this time, Plaintiff was on leave from the university and was not scheduled to return until December 1989 or January 1990.

Unlike the first selection committee, which used a 100-point scale to rank the applicants, the new selection committee used a fifty-point scale. This committee ranked its applicants based on some criteria that were different than those considered by the first selection committee. Based on this new system, the committee initially ranked Defendant Onwubiko third, Plaintiff fourth, and Dr. Okeke seventh. Only the top three applicants were considered further.

After further consideration, Defendant Onwubiko was ranked first and received the recommendation of the selection committee. The committee based its decision, in part, on Defendant Onwubiko's experience as Interim Department Head and the fact that he held a B.S. degree in Mechanical Engineering. The committee forwarded their recommendation to Defendant Rogers, along with the names of the second and third highest ranking applicants. Defendant Onwubiko was eventually selected as Head of the Department of Mechanical Engineering.

Plaintiff asserts that Defendants were aware of his opposition to the university's prayer policy and that this affected their promotion consideration. He argues that their prejudice either toward his race or religious preference was manifested in the arbitrary change of selection criteria and ranking system, as well as the selection of Defendant Onwubiko as Interim Department Head. Finally, Plaintiff questions whether Defendant Rogers' reaction to Plaintiff's use of the term "tarbaby" with regard to an unrelated matter affected the decisionmaking process.

Next, Plaintiff has brought suit under 42 U.S.C. § 1983, contending that Defendants deprived him of his civil rights by offering Christian prayers at university-sponsored functions he is required, or at least encouraged, to attend. Plaintiff also complains that Defendant Onwubiko holds Bible study classes at the Engineering School. Plaintiff alleges that the promotion of these religious activities in such a manner violates the Establishment Clause of the First Amendment. He further contends that requiring students and faculty to attend such events violates their rights under the Free Exercise Clause of the First Amendment.

Since Plaintiff has been a member of the TSU faculty, Christian prayers have been offered at school-sponsored events, such as commencment ceremonies, faculty meetings, and dedication ceremonies. Plaintiff contends that he is either required to attend or expected to attend these functions. In fact, Plaintiff points out that participation in school-sponsored events is among the criteria upon which faculty members are evaluated. He contends that these religious activities have been initiated or encouraged by all of the individual Defendants, who have either planned or participated in school-sponsored events that include Christian prayers.

In response to Plaintiff's objections, Mary Walker, general counsel for the State University and Community College System of Tennessee, issued a memo instructing its member schools, including TSU, to refrain from including invocations and benedictions that contain religious messages from a particular denomination. (Deposition of Annie W. Neal, Exhibit No. 2). The memo, dated May 8, 1988, did state that nonsectarian or nondenominational prayers may be included in school-sponsored events. Although there is some dispute as to whether Defendants complied with the instructions of Ms. Walker's memo, it is not disputed that prayers continued to be given at school-sponsored events after May 8, 1988. What constitutes a "generic" or "nonsectarian" prayer and whether or not the prayers offered complied with that definition are disputed issues.

In an effort to prevent the continued offering of prayers at university-sponsored events, Plaintiff filed the present suit on January 31, 1991. Nonetheless, Defendants continued to offer prayers at graduation and other school-sponsored events. Finally, in response to Plaintiff's Motion for a Preliminary Injunction filed April 19, 1993, Defendant Hefner stated that prayer would not be given at the May 8, 1993, graduation ceremony. Thus, the Court denied Plaintiff's Motion for a Preliminary Injunction because his request had been rendered moot by Defendant Hefner's decision.

At the ceremony, however, school officials had substituted a "moment of silence" for the invocation that had been given in the past. Thus, after all participants in the graduation had been seated, Dr. Robert Hudson requested that the crowd stand and recognize a moment of silence. After a brief period of silence, an anonymous person or group of people in the audience spontaneously began to recite the Lord's Prayer, a well-known Christian prayer. Soon, many others in the audience

joined in the prayer as well. When the crowd had finished reciting the prayer, Dr. Hudson returned to the podium and said, "Thank you. Please be seated." The ceremony then continued as planned. The next item on the program was a Christian hymn entitled "Let us Break Bread Together." The hymn, which was sung by the TSU choir, contains references to "God" and "Lord." Plaintiff was present throughout the graduation ceremony and claims that he was unaware that either a "moment of silence" or songs containing Christian references would be included as part of the program. After the ceremony, Plaintiff amended his motion for a preliminary injunction to request that Defendants also be enjoined from including a "moment of silence" in school-sponsored events.

Consistent with the format of the graduation ceremony, on June 8, 1993, Defendant Hefner instituted a policy prohibiting prayer at TSU functions. The policy does not forbid the recognition of a moment of silence.

At the graduation ceremony on August 7, 1993, a moment of silence was again recognized. Once again, a number of persons began to recite the Lord's Prayer during that moment of silence. Plaintiff now believes that if the practice of including a moment of silence in school-sponsored events is not prohibited, these audience prayers will continue to be given.

Defendants filed a Motion for Summary Judgment, arguing that the decisions not to promote Plaintiff were based on his qualifications rather than his religion or race. They further assert that Plaintiff's claims under Section 1983 either are barred under the Tennessee Statute of Limitations or are not cognizable under Section 1983 because Defendants' actions do not violate the First Amendment.

In ruling on a motion for summary judgment, this Court must construe the evidence produced in the light most favorable

to the non-moving party, drawing all justifiable inferences in his or her favor. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). A party may obtan summary judgment if the evidentiary material on file shows "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party bears the burden of satisfying the court that the standards of Rule 56 have been met. *See Martin v. Kelley*, 803 F.2d 236, 239 n.4 (6th Cir. 1986). The ultimate question to be addressed is whether there exists any genuine issue of material fact which is disputed. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 248. If so, summary judgment dismissal is inappropriate.

To prove his claim of discrimination, Plaintiff must first establish a prima facie case that he was discriminated against on the basis of his race or religion. *McDonnell Douglas Corp.v. Green*, 411 U.S. 792, 802 (1973). Once Plaintiff establishes a prima facie case, the burden shifts to Defendants "to articulate some legitimate, nondiscriminatory reason" for choosing not to promote Plaintiff. *Id.* If Defendants are able to articulate such a reason, the burden then shifts back to Plaintiff to show that the proffered reason was a mere pretext for discrimination. *Id.* Defendants do not dispute that Plaintiff has established a prima facie case of discrimination. Rather, they argue that they have proffered a legitimate, nondiscriminatory reason for their decision not to promote Plaintiff and that Plaintiff has not carried his burden of showing that reason is pretextual.

With respect to Plaintiff's Title VII claim for the denial of his application for promotion to dean, the Court agrees with Defendants. Defendants carried their burden by articulating a legitimate, nondiscriminatory reason—i.e., they relied on the recommendation of the selection committee which found

that Defendant Rogers was more qualified to hold the position. *See Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 255-58 (1981) (stating that a Title VII defendant has satisfied its burden under the *McDonnell Douglas* burden-shifting scheme when it proffers a reason for its decision even though it provides no factual basis for its explanation).

Plaintiff did not satisfy his burden of proving that the Defendants' proffered reason for denying him promotion to Dean of the School of Engineering is a mere pretext for discrimination. Plaintiff claims that the absence of the applications and many other documents concerning the selection committee's decision to hire Defendant Rogers as dean renders their decision suspect and establishes that the proffered reason is pretextual. To prove that the selection committee's decision was based on a discriminatory motive rather than the applicants' qualifications, Plaintiff must show that he was indeed more qualified than Defendant Rogers for the position. Although many of the documents concerning the selection committee's decision have been lost, Plaintiff's burden may have been satisfied by the introduction of other types of evidence, such as deposition testimony of committee members or an objective comparison of the applicants' qualifications in 1988.

With respect to Plaintiff's claim that Defendants discriminated against him when choosing not to promote him to Head of the School of Engineering, the Court disagrees with Defendants, finding that Plaintiff has submitted sufficient evidence from which a jury could find that Defendants' proffered reason is a mere pretext for discrimination. Once again, Defendants claim that their reason for not promoting Plaintiff to the position of Department Head was the selection committees' decisions to offer the position to other applicants. Plaintiff has submitted a great deal of evidence that this reason may be pretextual. First, he questions why Defendant Rogers

did not provide to the selection committee all of the biography material he requested. Then, he notes that Defendant Rogers changed the qualifications for the position when the second selection committee was assembled. The position now required a B.S. degree in Mechanical Engineering, which Plaintiff did not hold. Next, Plaintiff points out that the second selection committee changed the process by which applicants would be judged. Finally, he notes that Defendant Rogers appointed Defendant Onwubiko as Interim Department Head, thus giving Defendant Onwubiko additional experience which helped him to receive the promotion instead of Plaintiff. Although Defendants claim that the rationale for these decisions was not discriminatory, the Court finds that Plaintiff has produced enough evidence from which a reasonable juror could find that Defendants' basis for deciding not to promote Plaintiff was indeed discriminatory. Therefore, the Court must deny Defendants' motion with respect to Plaintiff's Title VII claim for the denial of his application for promotion to Head of the School of Mechanical Engineering.

Next, Plaintiff has brought a claim under 42 U.S.C. § 1983, arguing that Defendants violated his rights under the Establishment Clause and the Free Exercise Clause of the First Amendment to the United States Constitution. Plaintiff has referred to numerous instances in which he believes Defendants violated his First Amendment rights. These events include: (1) the holding of Bible study meetings by Defendant Onwubiko in the School of Engineering; (2) the offering of Christian and/or nonsectarian prayers or the recognition of a moment of silence at university-sponsored events, such as dedications, lecture series, and graduation; and (3) the singing of songs containing Christian references during commencement ceremonies. The Court will address each of these events and the First Amendment's effect upon them individually.

First, Defendant has argued that allowing Defendant Onwubiko to hold a Bible study group in the School of Engineering violates his First Amendment rights. Under the Supreme Court's holding in *Board of Education v. Mergens*, 496 U.S. 226 (1990), Plaintiff clearly has not alleged facts sufficient to prove a violation under the First Amendment. In *Mergens*, a majority of the Court held that permitting a Christian Bible study group to meet during noninstructional time on school property as an extracurricular student organization does not violate the Establishment Clause when other clubs, whether or not religiously affiliated, are afforded the same opportunity to meet on school grounds as an extracurricular student organization. *Id.* at 253. *See also Widmar v. Vincent*, 454 U.S. 263 (1981). Plaintiff has not alleged that other groups were denied permission to meet at the School of Engineering during noninstructional time, nor has he alleged that the group meets during instructional times or that the students receive some type of credit for attending. Therefore, the Court finds that Plaintiff has not alleged facts sufficient to prove his claim under Section 1983 regarding Defendant Onwubiko's Bible study group.

Next, Plaintiff contends that the offering of a prayer, whether Christian or nonsectarian, and the recognition of a moment of silence at graduation and other university-sponsored events violated his First Amendment rights. Specifically, Plaintiff contends that the Defendants' decision to choose a Christian minister to offer prayer, whether Christian or nonsectarian, violates his rights under both the Establishment Clause and the Free Exercise Clause. Plaintiff further argues that in light of his continual struggle to strike prayer from TSU's graduation ceremonies, the Defendants' decision to replace the prayer with a moment of silence, which later erupted into an audience recitation of the Lord's Prayer, calls into question

the intent of the Defendants in issuing a moment of silence. He asserts that the Defendants intended for the moment of silence to be used for prayer and thus is violative of the Establishment Clause.

The Establishment Clause of the United States Constitution states, "Congress shall make no law respecting an establishment of religion . . . ." This simple statement has led to great dissension not only among the citizens of this country but also among its courts. Indeed, Supreme Court opinions on the Establishment Clause apply at least one of five tests devised to determine whether state participation in religious activity is violative of the First Amendment. Despite the number of tests available to the Court, it has chosen to forego application of any test in at least one instance. *See Marsh v. Chambers*, 463 U.S. 783 (1983) (finding that the unique history of legislative prayer demonstrated that it was not violative of the Establishment Clause). This Court now must face the task of determining the appropriate test to be applied to the facts of this case.

In *Lee v. Weisman*, 505 U.S. ____, 112 S.Ct. 2649 (1992), the Supreme Court issued its most recent opinion concerning prayer in public schools. In *Lee*, Deborah Weisman, a student at Nathan Bishop Middle School, and her father, Daniel Weisman, brought suit to prevent the principal of her middle school, Robert E. Lee, from appointing a member of the clergy to pray at the commencement ceremony.[4] For many years,

[4] Four days before the middle school graduation ceremony, the student and her father sought a temporary restraining order to prohibit school officials from including a prayer in the ceremony. The United States District Court for the District of Rhode Island denied the motion for lack of adequate time to consider it. The student subsequently attended the ceremony at which a prayer was given. Nonetheless, the Supreme Court found that the student retained standing to bring suit because at the time the Court

the Providence School Committee and the Superintendent of Schools had a policy of allowing principals to invite members of the clergy to give invocations and benedictions at middle school and high school graduations. For Ms. Weisman's graduation from middle school, her principal had invited a rabbi to give a prayer at the commencement ceremony. The principal also provided the rabbi with a pamphlet entitled, "Guidelines for Civic Occasions" and advised him that prayers should be nonsectarian. *Id.* at 2652.

In an opinion authorized by Justice Kennedy, the Court abandoned the traditional test first announced in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), in favor of a new test that examines whether the state has *coerced* someone into participating in a religious activity. This "coercion test" is based upon the premise that "at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise, or otherwise act in a way which 'establishes a [state] religion or religious faith, or tends to do so.' " *Lee*, 112 S.Ct. at 2655 (quoting *Lynch v. Donnelly*, 465 U.S. 668, 678 (1984)) (also citing *Allegheny County v. Greater Pittsburgh ACLU*, 492 U.S. 573, 591 (1989), quoting *Everson v. Board of Education*, 330 U.S. 1, 15-16 (1947)). Consequently, the Court found that the state, through its agent, Mr. Lee,[5] coerced Ms. Weisman into participating in the prayer.

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heard the controversy she was enrolled in a local high school, which also included a prayer as part of its commencement exercise. *Lee*, 112 S.Ct. at 2653-54.

[5] The Court found that Mr. Lee, as principal of the middle school, is an agent of the state for purposes of determining state action under the Establishment Clause. Specifically, the Court noted that his choice to have an invocation at the graduation ceremony was "a choice attributable to the State, and from a constitutional perspective it is as if a state statute decreed that the prayers must occur." *Lee*, 112 S.Ct. at 2655.

To satisfy the coercion test, a plaintiff must show that she was forced to participate in a religious activity. The Court found that although Ms. Weisman was not forced to attend the graduation ceremony, her presence was not voluntary in the true sense of the term; therefore, in order to reap the "intangible benefits which have motivated [her] throughout youth and all her high school years," the state requires her to join in prayer. *Lee,* 112 S.Ct. at 2659. The Court also found that her presence at the ceremony required her participation in the prayer, stating that public pressure, as well as peer pressure, forced her to stand or, at least, maintain respectful silence during prayer. *Id.* at 2658. The Court considered this act of standing or remaining silent during the prayer to be the equivalent of participation in the prayer. *Id.* (stating that "a reasonable dissenter in this milieu could believe that the group exercise signified her own participation or approval of it").

Four Justices concurred with the holding in *Lee*; however, they wrote separately to clarify that proof of coercion, in their view, is not necessary to discover all violations of the Establishment Clause. *Id.* at 2664 (Blackmun, J., concurring) (citing *Abington School District v. Schempp,* 374 U.S. 203, 223 (1963); *id.* at 229 (Douglas, J., concurring); *Wallace v. Jaffree,* 472 U.S. 38, 72 (1985) (O'Connor, J., concurring in judgment); *Comm. for Public Ed. v. Nyquist,* 413 U.S. 756, 786 (1973)); *Lee,* 112 S.Ct. at 2671 (Souter, J., concurring). These Justices support the endorsement test first developed by Justice O'Connor in her concurrence in *Lynch v. Donnelly,* 465 U.S. 668, 690 (1984) (O'Connor, J., concurring). *See Lee,* 112 S.Ct. at 2664, 2667 (Blackmun, J., concurring) (stating that "our cases have prohibited government endorsement of religion, its sponsorship, and active involvement in religion, whether or not citizens were coerced to conform); *id.* at 2671-72 (Souter, J., concurring). The endorsement test asks whether

the state activity involved constitutes either an endorsement or disapproval of religion. *Lynch*, 465 U.S. at 693 (O'Connor, J., conurring). The Justices concurred in the majority opinion authored by Justice Kennedy because they believed that applying the endorsement test to the facts of *Lee* would render the same result.

Finally, four Justices dissented in the majority opinion in *Lee*. In an opinion authored by Justice Scalia, these Justices discussed America's cultural history involving prayer and the legislative history behind the adoption of the Establishment Clause, finding that the Framers intended the clause to prevent "coercion of religious orthodoxy and of financial support *by force of law and threat of penalty*." *Lee*, 112 S.Ct. at 2683 (Scalia, J., dissenting) (emphasis in original). They denounced the coercion test as "incoherent" and too difficult for judges to apply. *Id.* at 2681 (Scalia, J.,dissenting). Nonetheless, they assert that even if the Court applied the coercion test, it is "ludicrous" to find that Ms. Weisman's standing or remaining silent during a prayer amounted to participation. *Id.* at 2681-82 (Scalia, J., dissenting).

It is apparent from the opinions written in *Lee* that there is no consensus regarding the Establishment Clause. This Court agrees with Justice Scalia and many other previous Supreme Court opinions that in order to interpret the meaning of the Establishment Clause properly it is necessary to examine the legislative history surrounding its adoption. *See id.* at 2679 (Scalia, J., dissenting) (quoting *Lynch*, 465 U.S. at 673 (1984) (stating that an interpretation of the Estalishment Clause must "compor[t] with what history reveals was the contemporaneous understanding of its guarantees")). *See also Marsh*, 463 U.S. at 790; *Schempp*, 374 U.S. at 294 (Brennan, J., concurring). The Court must refer to "historical

practices and understandings'' in determining the meaning of the Clause. ''It is said that '[a] test for implementing the protections of the Establishment Clause that, if applied with consistency, would invalidate longstanding traditions cannot be a proper reading of the Clause.''' *Id.* at 2678 (Scalia, J., dissenting) (quoting *Allegheny County,* 492 U.S. at 657, 670 (1989) (Kennedy, J., concurring in judgment in part and dissenting in part)).

The Establishment Clause cannot require a complete separation between church and state because it is upon the very principles of the church that our nation was founded and continues to flourish.[6] ''There is an unbroken history of official

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[6] In *Zorach v. Clauson,* 343 U.S. 308 (1952), Justice Douglas recognized:

> The First Amendment, however, does not say that in every and all respects there shall be a separation of Church and State. Rather, it studiously defines the manner, the specific ways, in which there shall be no concert or union of dependency one on the other. That is the common sense of the matter. Otherwise the state and religion would be aliens to each other—hostile, suspicious, and even unfriendly. . . . Prayers in our legislative halls; the appeals to the Almighty in the messages of the Chief Executive; the proclamations making Thanksgiving Day a holiday; ''so help me God'' in our courtroom oaths—these and all other references to the Almighty that run through our laws, our public rituals, our ceremonies would be flouting the First Amendment. A fastidious atheist or agnostic could even object to the supplication with which the Court opens each sesssion: ''God save the Unied States and this Honorable Court.''
>
> We would have to press the concept of separation of Church and State to these extremes to condemn the present law on constitutional grounds. . . .
>
> We are a religious people whose institutions presuppose a Supreme Being. We guarantee the freedom to worship as one chooses. We make room for as wide a variety of beliefs

acknowledgment by all three branches of government of the role of religion in American life from at least 1789." *Lynch*, 465 U.S. at 674. These traditions are too numerous to mention in this opinion, but some examples include: (1) the official recognition of Thanksgiving as a national holiday on which to give thanks to God, *id.* at 675 (citing Ch. 167, 16 Stat. 168); (2) the congressional decision to prescribe "In God We Trust" as our national motto, *id.* at 676 (citing 36 U.S.C. § 136); (3) the inclusion of the language "One nation under God" in our Pledge of Allegiance to the American flag, *id.*; and (4) presidential proclamations recognizing a National Day of Prayer "on which [day] the people of the United States may turn to God in prayer and meditation at churches, in groups, and as individuals." *Id.* (these proclamations were issued at the direction of Congress in 36 U.S.C. § 169h). Although, standing alone, these traditions would not justify contemporary violations of the Establishment Clause, they also serve to shed light on what the Framers intended the Clause to mean and how they thought it should be applied. *Marsh*, 463 U.S. at 790.

Many opinions have focused on the legislative history surrounding the adoption of the First Amendment, ultimately con-

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> and creeds as the spiritual needs of man deem necessary. We sponsor an attitude on the part of government that shows no partiality to any one group and that lets each flourish according to the zeal of its adherents and the appeal of its dogma. When the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions. For it then respects the religious nature of our people and accommodates the public service to their spiritual needs. To hold that it may not would be to find in the Constitution a requirement that the government show a callous indifference to religious groups. That would be preferring those who believe in no religion over those who do believe. . . .

Id. at 312-14.

cluding that the Framers must have intended to allow government to participate to some degree in religious activity. *See, e.g., Lee,* 112 S.Ct. at 2679-81 (Scalia, J., dissenting); *Lynch,* 465 U.S. at 674; *Marsh,* 463 U.S. at 790-91. Justice Souter, however, in his concurring opinion in *Lee,* argued that the legislative history behind the adoption of the Establishment Clause supports the view that the Framers intended the Clause to prohibit "nonpreferential aid to religion". *Lee,* 112 S.Ct. at 2668-69 (Souter, J., concurring). This Court finds Justice Souter's argument unconvincing because the evolution of the Clause indicates that Congress narrowed its scope from James Madison's initial proposal. The original proposal read: "The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext, infringed," *Id.,* at 2668 (Souter, J., concurring) (quoting 1 Annals of Cong. 434 (1789)). Today, the First Amendment declares, "Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof." U.S. Const. amend. I. By omitting any language equivalent to "nor shall the full and equal rights of conscience be in any manner, or on any pretext, infringed." the Framers clearly intended to narrow the scope of the First Amendment.

The Framers' intent is further demonstrated by their actions just three days prior to passage of the Bill of Rights. On September 22,1789, the First Congress enacted a statute authorizing the payment of chaplains to open each legislative session with a prayer. *Marsh,* 463 U.S. at 788 (citing 2 Annals of Cong. 2180; § 4, 1 Stat. 71).[7] Three days later the

[7] The *Marsh* Court also noted that James Madison, who drafted the original proposal for the First Amendment, was one of the members of

Framers agreed upon the final draft of the Bill of Rights. *Id.* (citing S. Jour., 1st Cong., 1st Sess., 88; H.R. Jour., 1st Cong., 1st Sess., 121 (1826 ed.). Also on that day, the House of Representatives resolved to recommend to the President that he declare a Thanksgiving Day upon which the nation might acknowledge "the many signal favors of Almighty God." *Id.* at 788 n.9 (quoting H.R. Jour., at 123, and citing S. Jour., at 88). "Clearly the men who wrote the First Amendment Religion Clause did not view paid legislative chaplains and opening prayers as a violation of that Amendment, for the practice of opening sessions with prayer has continued without interruption ever since that early session of Congress." *Id.* at 788.

The plain meaning of the words of the Establishment Clause as written reflect this intent. In drafting the First Amendment, the Framers chose to use the word "establishment." To "establish" is defined as "to make a state institution of." Webster's New World Dictionary 465 (3d ed. 1991). Thus, when the Framers chose to prohibit Congress from making laws respecting an establishment of religion, they prohibited them from making laws that would make a state institution of religion. To prevent Congress from establishing religion is

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Congress appointed by the House of Representatives to consider the manner of electing chaplains for the legislature. *Marsh*, 463 U.S. at 788 n.8 (citing H.R. Jour., 1st Cong., 1st Sess., 11-12 (1826 ed.)). Madison also voted for the bill authorizing payment to legislative chaplains. *Id.* (citing 1 Annals of Cong. 891 (1789)). *Cf. Lee*, 112 S.Ct. at 2675 n.6 (Souter, J., concurring) (stating that Madison later wrote that "it was not with [his] approbation, that the deviation from [the immunity of Religion from civil jurisdiction] took place in Congs., when they appointed Chaplains, to be paid from the Natl. Treasury") (citing Letter from J. Madison to E. Livingston (July 10, 1822), in 5 Founders' Constitution, at 105).

less restrictive than preventing Congress from "touching"[8] or otherwise preferring a religion or religion in general.

This interpretation of the Establishment Clause comports with Justice Goldberg's concurrence in *Abington School District v. Schempp*, 374 U.S. 203 (1963), which was cited with approval in the majority opinion in *Lee*. Justice Goldberg observed:

> The First Amendment does not prohibit practices which by any realistic measure create none of the dangers which it is designed to prevent and which do not so directly or substantially involve the state in religious exercises or in the favoring of religion as to have meaningful and practical impact. It is of course true that great consequences can grow from small beginnings, but the measure of constitutional adjudication is the ability and willingness to distinguish between real threat and mere shadow.

Id. at 308 (Goldberg, J., concurring), quoted in *Lee*, 112 S.Ct. at 2661. The Framers were concerned with government-actions that had the potential to present a "real threat" to the establishment of a religion in our nation. As the Court in *Marsh* found that legislative prayer presents no more potential for establishing a national religion than providing school transportation, *Everson v. Board of Education*, 330 U.S. 1 (1947),

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[8] During the drafting process, the House of Representatives ultimately rejected a proposal submitted by Samuel Livermore of New Hampshire, which read: "Congress shall make no laws *touching* religion . . . ." 1 Annals of Cong. 434 (1789) (emphasis added). Instead, it redrafted the amendment and replaced the word "touching" with "establishing." *Lee*, 112 S.Ct. at 2669 (Souter, J., concurring) (citing 1 Documentary History of the First Federal Congress of the United States of America 136 (Senate Journal) (L. de Pauw ed. 1972), and 1 Annals of Cong. at 765).

beneficial grants for higher education, *Tilton v. Richardson*, 403 U.S. 672 (1971), or tax exemptions for religious organizations, *Walz v. Tax Comm'n*, 397 U.S. 664 (1970), so this Court finds that permitting a prayer to be offered at a public university's graduation ceremony and other occasional university-wide functions presents no real threat of establishing religion. *See Lee*, 112 S.Ct. at 2683-85 (Scalia, J., dissenting) (stating that the coercion with which the Framers were concerned was the "coercion of religious orthodoxy and of financial support *by force of law and threat of penalty*") (emphasis in original).[9] This factor distinguishes the present case from the Supreme Court's prior opinions regarding school prayer, in which the Court struck down laws that permitted or required school officials to offer prayers at the beginning of each school day. *See, e.g., Schempp*, 374 U.S. 203; *Engel v. Vitale*, 370 U.S. 421 (1962). Prayers that are offered daily in an instructional setting by an authority figure to young children present a much greater *potential* for establishing a religion because the frequency and atmosphere in which the prayers are offered would more likely lead the children to believe that the prayers are sanctioned by the State. *See Lee*, 112 S.Ct. at 2684-85 (Scalia, J., dissenting).

Plaintiff has challenged the offering of both sectarian and nonsectarian prayers. Heeding the Court's warning in *Marsh*, however, this Court will not focus on the content of the prayer. *Marsh*, 463 U.S. at 794-95 (1983). *See also Stein v. Plainwell Community Schools*, 822 F.2d 1406, 112 (6th Cir. 1987)

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[9] In his concurrence in *Lee*, Justice Souter also appears to embrace the "real threat" theory He states that "Madison himself respected the difference between the trivial and the serious in constitutional practice." *Lee*, 112 S.Ct. at 2678. Justice Souter simply disagrees with Justice Scalia that prayer at a middle or high school graduation ceremony does not present a great potential for establishment of religion.

(Wellford, J., dissenting). The Establishment Clause was written to prohibit not only the establishment of a particular religion but also the establishment of religion in general. *See Epperson v. Arkansas*, 393 U.S. 97, 104 (1968); *Engel*, 370 U.S. at 430; *Everson*, 330 U.S. at 15. Thus, this Court finds that simply offering prayers, whether sectarian or nonsectarian, at a public university graduation ceremony does not violate the Establishment Clause because it does not carry with it the potential for establishing religion in general or any particular religion. Consequently, the recognition of a moment of silence, which has even less potential for establishing religion, does not violate the Establishment Clause either.

Even if this Court were to apply the coercion test supported by the majority in *Lee*, it cannot find that Plaintiff was in any way coerced into participating in the prayers. First, this Court would agree with Justice Scalia that a person who merely stands in respectful silence while a prayer is uttered, as Plaintiff apparently did in the present case, has not participated in that prayer. *Lee*, 112 S.Ct. at 2681-82 (Scalia, J., dissenting). One does not "participate" in prayer by merely listening or remaining quiet. One who remains silent while the rest of the audience applauds a speaker or entertainer cannot be said to join in their praise. Similarly, one who quietly listens during a speech cannot be said to espouse the views of the speaker. Likewise, a person who sits, or even stands, in silence while a prayer is being offered cannot be said to either participate or agree with the prayer uttered.

Plaintiff argues that as a faculty member he is required, or at least expected, to attend graduation and other university functions. He argues that his required attendance at these events is equivalent to the state coercing his participation in the prayers offered at the events. Defendants contend

Plaintiff's attendance at graduation is not mandatory, and Plaintiff is not penalized or disciplined for not attending. The Court finds, however, that simply because Plaintiff is present at these functions does not mean that he is participating in the prayers given at the functions.

The majority in *Lee* did note that its opinion did not address whether mature adults placed in a similar situation would be coerced into participation. *Id.* at 2658-59. The majority placed particular emphasis on the age of the plaintiff in *Lee*, stating that adolescents were highly susceptible to peer pressure toward conformity. *Id.* at 2659 (citations omitted). In the present case, Plaintiff is a tenured faculty member who follows the Hindu religion. His attendance at the graduation ceremony does not raise the same constitutional concerns as those cases involving school-age children. The Court has generally recognized a decreased risk of establishment where adults are concerned. For example, in *Marsh*, the Court stated, "The Establishment Clause does not always bar a state from regulating conduct simply because it 'harmonizes with religious canons.' Here, the individual claiming injury by the practice is an adult, presumably not readily susceptible to 'religious indoctrination,' or peer pressure . . . ." *Marsh*, 463 U.S. at 792 (citations omitted). Similarly, Justice O'Connor noted in *Wallace v. Jaffree*, 472 U.S. 38 (1985), that Presidential Proclamations for public prayers of Thanks are distinguishable from school prayer because "they are received in a noncoercive setting and are primarily directed at adults, who presumably are not readily susceptible to unwilling religious indoctrination." *Id.* at 81 (O'Connor, J., concurring). Accordingly, this Court finds that even if Plaintiff were considered to have "participated" in the prayers by his mere presence at the event, his age and maturity prevent him from being susceptible to any "religious indoctrination" or peer pressure under such

circumstances. Therefore, his rights under the Establishment Clause have not been violated.

Thus, the Court holds that under either the coercion test as applied by the majority in *Lee* or under a test that considers the legislative history and plain meaning of the language in the Establishment Clause, school officials have not violated the Establishment Clause when prayers, whether sectarian or nonsectarian, are offered or a moment of silence is recognized at a university graduation ceremony or other ceremonial events.

Finally, Plaintiff has also complained that songs sung at the commencement ceremony contain Christian references and are therefore violative of the Establishment Clause.[10] For the reasons discussed in the previous section, the Court can find no violation of the Establishment Clause. Simply singing a song that contains a reference to God neither coerces Plaintiff's participation in worshipping God nor promotes the establishment of religion. These songs contain messages that have long been part of our country's heritage. Traditional practices like this "follow the best of our traditions" and "respect the religious nature of our people." *Zorach v. Clauson*, 343 U.S. 306, 314 (1952). Courts have often commended this type of governmental acknowledgment of our religious heritage. *See, e.g., Lynch*, 465 U.S. at 675-77 (recognizing the countless illustrations of governmental acknoweledgment of our national religious heritage, such as Thanksgiving Day and the Pledge of Allegiance). *See also Stein*, 822 F.2d at 1417 (Wellford, J.,

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[10] Specifically, Plaintiff has complained that the graduation audience was asked to participate in the singing of "America the Beautiful," which contains references to "God" and "His grace," at the May 8, 1993 graduation ceremony. Plaintiff also complains that later in the ceremony the university choir sang a Christian hymn, entitled "Let Us Break Bread Together," which also contains references to "God" and "Lord."

dissenting). This Court likewise finds that these songs recognizing not only America's beauty but also its religious heritage are appropriate and desirable at public events like the university's graduation ceremony. Also, as previously discussed, Plaintiff does not have to sing the offending song or agree with the lyrics or melody. Merely standing or sitting while the song is sung does not constitute forced participation.

Lastly, Plaintiff has argued that the offering of prayers at university-sponsored events he is required to attend violates his rights under the Free Exercise Clause of the First Amendment. Other than including this claim in his Complaint, however, Plaintiff has failed to pursue this argument. "The First Amendment encompasses two distinct guarantees—the government shall make no law respecting an establishment of religion or prohibiting the free exercise thereof—both with the common purpose of securing religious liberty." *Lee*, 112 S.Ct. at 2665 (Blackmun, J., concurring) (citing *Everson*, 330 U.S. at 40, *Schempp*, 374 U.S. at 227, and *Wallace*, 472 U.S. at 50). Plaintiff has presented no argument that Defendants have interfered with his practice of Hinduism by offering prayers at university functions. Likewise, this Court can conceive of no argument upon which Plaintiff may base his Free Exercise claim. Accordingly, with respect to Plaintiff's claims under 42 U.S. C. § 1983, Defendant's Motion for Summary Judgment is hereby GRANTED.

For the foregoing reasons, Defendants' Motion for Summary Judgment is hereby GRANTED IN PART and DENIED IN PART. Accordingly, Plaintiff's claim for employment discrimination for denial of a promotion to Head of the Department of Mechanical Engineering will proceed to trial.

It is so ORDERED.

/s/Robert L. Echols

ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

DR. DILIP K. CHAUDHURI,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 3-91-0081
	)	JUDGE ECHOLS
STATE OF TENNESSEE, et al.,	)	
	)	
Defendants.	)	

ORDER

Presently pending before this Court is Defendants' Motion for Summary Judgment, to which Plaintiff has filed a Memorandum in Opposition. For the reasons more fully discussed in the accompanying Memorandum, Defendant's Motion for Summary Judgment is herby GRANTED IN PART and DENIED IN PART.

Accordingly, with respect to Plaintiff's claims under 42 U.S.C. §1983, Defendant's Motion for Summary Judgment is GRANTED. With respect to Plaintiff's claim of employment discrimination regarding the denial of his promotion to Head of the Department of Mechanical Engineering, Defendant's Motion for Summary Judgment is DENIED, and this claim will proceed to trial as scheduled.

This document was entered on the docket in compliance with Rule 58 and/or Rule 79(a), FRCP, on 1/6/95 By: K. Samples

/s/ Robert L. Echols
ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

DR. DILIP K. CHAUDHURI,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 3-91-0081
	)	JUDGE ECHOLS
STATE OF TENNESSEE, et al.,	)	
	)	
Defendants.	)	

ORDER

On January 6, 1995, this Court entered an Order (Docket Entry No. 142) in which the Court granted in part and denied in part Defendants' Motion for Summary Judgment. In the Order, however, the Court failed to clarify that Defendants' Motion for Summary Judgment was denied with respect to Plaintiff's claim of employment discrimination regarding the denial of his promotion to Dean of the School of Engineering. In accordance with the Memorandum Opinion entered on January 6, 1995 (Docket Entry No. 141), the Court hereby GRANTS Defendants' Motion for Summary Judgment with respect to Plaintiff's claim of employment discrimination regarding the denial of his promotion to Dean of the School of Engineering.

It is so ORDERED.

/s/ Robert L. Echols
ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE

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APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

DR. DILIP K. CHAUDHURI,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 3-91-0081
	)	JUDGE ECHOLS
STATE OF TENNESSEE, et al.,	)	
	)	
Defendants.	)	

ORDER

Presently pending before the Court is the Magistrate Judge's Report and Recommendation (entered August 5, 1993; Docket Entry No. 87) which addresses Plaintiff's second Motion for a Preliminary Injunction (Docket Entry No. 64) as amended (Docket Entry No. 86).

In the Memorandum and Order (entered January 6, 1995; Docket Entry Nos. 141 and 142), the Court granted Defendant's Motion for Summary Judgment with respect to Plaintiff's claims under 42 U.S.C. § 1983. Accordingly, the Magistrate Judge's Report and Recommendation as well as the Plaintiff's second Motion for a Preliminary Injunction are hereby rendered MOOT.

It is so ORDERED.

/s/ Robert L. Echols
ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE

This document was entered on the docket in compliance with Rule 58 and/or 79(a), FRCP, on 1/11/95 By: K. Samples

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

DR. DILIP K. CHAUDHURI,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 3-91-0081
	)	JUDGE ECHOLS
STATE OF TENNESSEE, et al.,	)	
	)	
Defendants.	)	

ORDER

The Memorandum contemporaneously entered herewith constitutes this Court's finding of fact and conclusions of law as required by Rule 52(a) of the Federal Rules of Civil Procedure. For the reasons more fully outlined in the Memorandum, the Court hereby DECLARES that Plaintiff has failed to meet his burden of proof on his asserted claims. Accordingly, Plaintiff's claims of employment discrimination based upon his race, national origin, and religious beliefs are hereby denied, and judgment is entered for Defendants.

It is so ORDERED.

/s/ Robert L. Echols
ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE

This document was entered on the docket in compliance with Rule 58 and/or Rule 79(a), FRCP, on 3/12/96 By: K. Samples